

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM CHEAD JUSTICE, JR.,

Appellant.

No. 39279-8-II

UNPUBLISHED OPINION

Worswick, J. — William Justice appeals the trial court’s entry of an order striking and replacing nunc pro tunc language in a 1996 order. He argues that the State presented insufficient evidence that the language resulted from a clerical mistake. We affirm.

**FACTS**

On December 6, 1989, the State charged Justice with two counts of second degree rape of a child under cause number 89-1-01173-5. On February 1, 1990, the State filed an amended information charging him with one count of attempted second degree child molestation. On February 1, 1990, Justice pleaded guilty to attempted second degree child molestation.

On March 23, 1990, the trial court sentenced Justice under a special sex offender sentencing alternative to a term of local confinement with probationary terms and conditions, including sex offender registration, community supervision, and payment of legal financial obligations. On January 17, 1996, the State filed a motion seeking sanctions for Justice’s failure

to pay his legal financial obligations. On January 25, the Clark County Superior Court clerk filed a satisfaction of judgment indicating Justice's full payment of his legal financial obligations.

Based on the satisfaction of judgment, the State filed a "Motion and Order of Dismissal and Terminating Supervision" with the trial court on February 5, 1996. I Clerk's Papers (CP) at 16. The motion requested that the trial court "dismiss[] the Information filed herein on DECEMBER 6, 1989, and terminating the probation herein for the reason that [Justice] has paid his legal financial obligations." I CP at 16. The order stated that "the Information filed in the above-numbered and entitled cause on DECEMBER 6, 1989 hereby is dismissed" and "[Justice's] probation is terminated." I CP at 16. The trial court signed the order on the same day.

In 1996, Justice pleaded guilty to one count of forgery. At sentencing, the trial court included his 1990 attempted second degree child molestation conviction in his criminal history. The record contains no objections.

On December 3, 2007, the State charged Justice under cause number 07-1-02149-3 with failure to register as a sex offender based on his 1990 attempted second degree child molestation conviction under cause number 89-1-01173-5. On January 4, 2008, he pleaded guilty to the charge. At sentencing, the trial court included his 1990 conviction in his criminal history. Again, no one objected.

On September 10, 2008, the State charged Justice with failure to register as a sex offender under cause number 08-1-01490-8 based on his January 4, 2008 conviction. A jury convicted him. Again, the trial court included his 1990 conviction in his offender score.

Justice then moved to arrest judgment based on the trial court's 1996 order dismissing the

1989 information. The State responded by filing a motion for relief from the 1996 order. It argued, among other things, that any language requesting dismissal of the 1989 information or vacation of Justice's 1990 conviction resulted from a clerical mistake, oversight, or omission. In support of the motion, the prosecuting attorney who presented the 1996 motion averred that the State never intended to request dismissal of the 1989 information or vacation of Justice's 1990 conviction.

The trial court stated that when orders, like the 1996 order, are signed by all parties, trial courts often "approve the documents without scrutiny."<sup>1</sup> CD Proceedings at 26. It granted the State's motion. In its order, the trial court struck any language in the 1996 order referring to "dismissal of the 'December 6, 1989, Information.'" CP at 225. It corrected the 1996 order to read nunc pro tunc that "the Motion and Affidavit for Order Imposing Sanctions filed in the above-numbered and entitled cause on January 17, 1996, be, and the same is, hereby dismissed." CP at 225. Justice appeals.

#### ANALYSIS

Justice contends that the State presented insufficient evidence that the language struck by the trial court resulted from a clerical mistake. The State counters that the behavior of the State and Justice after the 1996 order indicates that neither party intended for that order to dismiss the 1989 information or vacate his 1990 conviction. We find the State's argument persuasive.

We review a trial court's entry of a nunc pro tunc order for abuse of discretion. *State v. Hendrickson*, 165 Wn.2d 474, 478, 198 P.3d 1027, *cert. denied*, 129 S. Ct. 2873 (2009). A trial

---

<sup>1</sup> The trial court judge was the same trial court judge who signed the 1996 order.

court abuses its discretion when it bases its decision on unreasonable or untenable grounds. *State v. Rafay*, 167 Wn.2d 644, 655, 222 P.3d 86 (2009).

CrR 7.8(a) provides in pertinent part, “Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.”

An error is clerical when the amended order expresses the trial court’s actual intention as reflected in the record. *Hendrickson*, 165 Wn.2d at 479. Where the record demonstrates the trial court’s intention to take, and belief it was taking, a particular action only to have that action thwarted by inartful drafting, it properly enters a nunc pro tunc order to reflect that intention. *Hendrickson*, 165 Wn.2d at 479.

Here, the trial court did not recall any intent to dismiss the information or vacate Justice’s conviction. To the contrary, the record reflects that the State, Justice, and the trial court proceeded for more than a decade with the belief and understanding that the trial court did not vacate his conviction. Finally, the temporal proximity of the State’s 1996 motion for sanctions, the clerk’s satisfaction of judgment, and the State’s later responsive motion reflects that it intended only to halt any sanction proceedings and terminate Justice’s supervision because he had paid his legal financial obligations. The trial court did not abuse its discretion in entering a nunc pro tunc order to reflect its true intention.

No. 39279-8-II

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

---

Worswick, J.

We concur:

---

Armstrong, J.

---

Penoyar, A.C.J.